

Hon. Michael Carpenter
Senate Chair
Hon. Donna Bailey
House Chair
Joint Standing Committee on Judiciary
Room 438, State House
Augusta, ME 04330

Monday, May 6, 2019

Dear Senator Carpenter and Representative Bailey

I apologize for not being present in person to deliver these comments, I have a conflict in another committee this morning. However, the Maine State Chamber would like to provide the committee with our thoughts with respect to **L.D. 666, *An Act to Protect Pregnant Workers***.

The Chamber supports this effort to confirm that adverse employment action directed to or at a person because that person is pregnant should be deemed illegal employment discrimination and that employers should be expected to reasonably accommodate the pregnant individual who cannot otherwise perform the essential functions of the position that the individual holds absent undue hardship. That said, we think the bill's phrase "Pregnancy-related condition" and its definition is confusing and should be more precise.

There are three points in the definition that concern us. First, under the present law the obligation to provide a reasonable accommodation exists for a qualified individual with a disability; that is, an individual with a physical or mental disability who, with or without reasonable accommodation can perform the essential functions of the position that the individual holds or desires. In contrast, the definition in the proposed bill only requires a limitation of *an employee's ability to perform a function – not an essential function -* of a job – not the position the employer holds. This definition results in much lower threshold for when an employer must analyze when to undertake the reasonable accommodation analysis and possibly provide the accommodation.

The second concern about the definition in the proposed bill is that as written, a "medical condition related to pregnancy or childbirth" could require the reasonable accommodation analysis for an indefinite period of time, possibly forever, even if that condition was not a disability as defined in the Maine Human Rights Act. We think that at some point

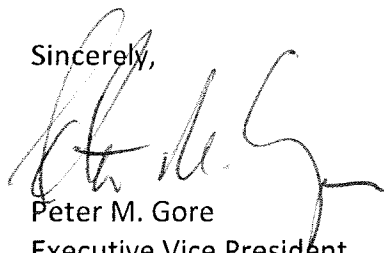
relatively shortly after the conclusion of the pregnancy, for an employer to be expected to undergo the reasonable accommodation analysis, the employee must have a “disability” as defined in the Act. If after the end of the pregnancy, the medical condition related to pregnancy of childbirth is not a “disability” as defined in the Act, then the employer should not have to undergo the reasonable accommodation analysis.

We suggest that “Pregnancy-related condition” – that which requires the employer to provide reasonable accommodations absent undue hardship – be defined as a limitation of an employee’s ability to perform the essential functions of the employment position that the individual holds or desires while the employee is pregnant. In other words, the level of disability should be the same as exists otherwise. We think our suggested language makes it clear that there is full protection for the pregnancy and that once the pregnancy is over, the issue is one of whether there is a disability under the general standard of the Maine Human Rights Act, not simply whether there is a medical condition related to pregnancy.

We have a final concern about the bill, and what is a reasonable accommodation in this context. We think it is plausible someone might argue that a reasonable accommodation might actually be time off from work – paid and it is possible that might make sense. We think it important, however, that this legislation state clearly that the reasonable accommodation language in this bill cannot be used to require more paid leave for a pregnancy than is otherwise required by Maine law.

Again, the Chamber believes that adverse employment action against pregnant people should be deemed illegal and we support the bill in implementing that goal. We do think that there needs to be more precise statements as to what invokes the reasonable accommodation obligation and how it works. We look forward to working with the Committee to work on those points. Again, I apologize for not being present to deliver these comments. I do plan to be at the committee’s work session on L.D. 666.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter M. Gore", written over a horizontal line.

Peter M. Gore
Executive Vice President
Maine State Chamber of Commerce